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Summary record of the 27th meeting
Held at Headquarters, New York, on Friday, 21 October 2011, at 10 a.m.

Chair: Mr. Haniff. . . . . (Malaysia)
later: Mr. Zelioli (Vice-Chair) . . . . . (Italy)

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The meeting was called to order at 10.05 a.m.

Agenda item 69: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/66/156, 161, 203, 204, 216, 225, 253, 254, 262, 264, 265, 268-272, 274, 283-285, 289, 290, 293, 310, 314, 325, 330, 342 and Add.1, and 372)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/66/267, 322, 343, 358, 361, 365, 374 and 518)

1. **Mr. El Jamri** (Chair, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families), stressing the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, said that the situation of migrants and asylum-seekers fleeing recent events in North Africa was a reminder of their vulnerability to human rights violations. The Committee had adopted a statement on the situation of migrant workers and members of their families in Libya, urging the authorities to comply with their obligations under the Convention and encouraging the international community to provide assistance.

2. With over 200 million international migrant workers worldwide, economic data and research had shown that protecting migrant workers enhanced development and domestic productivity. Migration flows had made it essential to establish standards and migration policies that protected the rights of migrant workers, including undocumented workers, and the Convention — the only universal treaty covering specifically the rights of migrant workers — provided a valuable legal framework.

3. Twenty years on, however, the Convention's universality was far from achieved. While the rate of ratification had increased, with only 45 States parties, the limited number of ratifications was regrettable and posed a major challenge to the Committee. In connection with the twentieth anniversary of the Convention, the High Commissioner for Human Rights, Ms. Pillay, had invited the 15 States that had only signed it to reaffirm their commitment to the rights of migrant workers by ratifying it. A global campaign had been launched calling on Governments to accede to the Convention. A number of activities to promote the Convention had been held, and he had represented the Committee at various international events on migration organized by United Nations or European bodies and a host of civil society initiatives.

4. In its consideration of reports and its conclusions, the Committee continued to assist States parties by identifying gaps in the protection and implementation of migrants' rights and formulated recommendations on how best to remedy them. It had noted a number of shared or concerns, among which was that some domestic laws and policies were incompatible with the Convention. It had also underlined the importance of collecting data, training Government officials in human rights, guaranteeing that the right of migrant workers to effective remedy was not impeded and continuing efforts to fight human trafficking.

5. Several treaty bodies had recognized the vulnerability of domestic workers worldwide. Consequently, the Committee had been pleased to adopt general comment No. 1 on migrant domestic workers, in which it had identified protection gaps and formulated recommendations for States parties. It also welcomed the adoption of the International Labour Organization Convention No. 189 concerning Decent Work for Domestic Workers, whose complementarity with the Convention could not be overemphasized.

6. While the Convention made the distinction between regular and irregular migrants, the Committee was concerned that migration policies were becoming more stringent in certain countries at the expense of migrants' rights, as illustrated by large numbers of administrative detentions of undocumented migrants despite there being no empirical evidence that such measures were a deterrent. One of the conclusions of the Committee's Day of General Discussion on the rights of migrant workers in an irregular situation and members of their families, held in September 2011, was that, although the rights guaranteed by the Convention were already enshrined in other instruments, its added value was not negligible, being the only international human rights instrument devoted to migrant workers' rights.

7. To date, the Committee had examined 18 initial reports and 2 second periodic reports submitted by States parties. It was regrettable that many States parties were late in submitting initial reports — only 23 had been submitted, while 30 were overdue, often by more than five years. Accordingly, at its fifteenth

session the Committee had discussed the possibility of considering the implementation of the Convention in the absence of a country report, as in other treaty bodies. A final decision would be taken in 2012, after consideration of the modalities.

8. At its fourteenth session, to enhance its working methods, the Committee had adopted a new procedure: lists of issues to be taken up would be drafted and sent to State parties before they had submitted their periodic reports, and their replies would serve as periodic reports. It had the dual aim of facilitating reporting for States parties, particularly those with limited financial and human resources, and eliciting more focused and timely reports. That new procedure was optional, hence not contrary to the provisions of the Convention.

9. The Committee had also decided at its fifteenth session to adopt a fixed timetable for the submission of reports, which, if respected, would allow the Committee to consider the reports of all 45 States parties within five years, at a rate of nine reports per year instead of four. It would thus have to adopt six lists of issues before submission of reports to the sixteenth session in April 2012. That, in addition to the fixed timetable, would mean a substantial increase in the Committee's workload and, in turn, necessitate more meetings and additional staff.

10. The Committee welcomed the adoption of the Organization's green policy, which, by providing Committee members with a laptop and electronic files, had resulted in a paper-light fifteenth session. Lastly, he reiterated that the Committee stood ready to assist States wishing to ratify the Convention and to help all States to interpret and implement its provisions.

11. **Mr. Elshakshuki** (Libya) said that the former regime had harmed migrant workers by tempting or forcing some of them to take up arms against Libyans. He stressed, however, that any violations of migrants' rights in the aftermath of the victorious revolution were the result of individual actions and in no way reflected the policy of the National Transitional Council. The Council would seek to put an end to such violations and would ensure that the new Libya met its obligations under international instruments.

12. **Mr. Yahiaoui** (Algeria) asked what steps or activities were undertaken by the Committee, given the small number of State parties, to raise awareness on the part of States that had not yet acceded to the Convention, especially host countries, so as to achieve widespread accession to and ratification of the Convention.

13. *Mr. Zelioli (Italy), Vice-Chair, took the Chair.*

14. **Mr. Quintaes** (Brazil) asked, with regard to the condition of migrants from Latin America in the United States of America, whether the Committee intended to look into federal legislation that had been adopted.

15. **Mr. El Jamri** (Chair, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families) said that he welcomed the developments in Libya and hoped that they would have a positive impact on migrants' rights. There had been three distinct phases in the Committee's dealings with Libya: the "before" situation, during which there had been many reports of violations of migrant workers' rights; the transition period, during which there had been some initial confusion, and the Committee, receiving information from OHCHR and NGOs on the difficulties encountered by many migrants in Libya, had appealed to neighbouring states, which faced similar problems for migrants, to keep borders open and to European Union countries to offer a humane reception to migrants coming across the Mediterranean; and the current situation, which would be discussed at the next session.

16. He welcomed Algeria's efforts to promote the Convention regionally and its involvement in the field of migrants' rights. Promotion was an ongoing task that was incumbent not only on the Committee but States parties as well. A steering committee had been established prior to the entry into force of the Convention to promote its ratification, and subsequently focused its work on periodic reports and on promotion, particularly through partnerships with civil society. In that regard, a platform for NGOs had recently been set up in Geneva to work specifically in migrant workers' rights. Ratification campaigns were under way in a number of countries.

17. A new development in 2011 had been the involvement of trade unions, and a permanent platform would be implemented to cooperate with the Committee. Previously, in the absence of trade union representation, migrant workers, particularly those in irregular situations, had had to defend themselves, as seen with construction workers in Paris and again in Abu Dhabi who had mobilized to demand their basic rights. Dialogue with different stakeholders such as members of parliament and international organizations had been successful, and he could say that there were

no valid financial, economic or technical arguments to counter the Convention — the only barriers remaining were political. It was important, therefore, to continue efforts to encourage wider ratification.

18. With regard to Latin American migrants, the Committee had examined the reports of many Latin American countries and was aware of difficulties that might arise with their neighbour to the north. However, its mandate covered only countries that had ratified the Convention. As the United States of America had not done so, the Committee could not make recommendations to the country in that regard, but it had voiced objections to some of its legislation in international forums.

19. The Convention had been in force for eight years, and he believed it was time for the Committee to take a new form of action. Migrant workers in irregular situations had often been singled out, with the excuse that the Convention gave them undue rights. That had been proven false, since migrants had those rights in their country of origin and often arrived in host countries in regular situations — for example, as seasonal workers or as foreign spouses of nationals. Circumstances in the host country could then lead them to become irregular: a seasonal worker had rights and responsibilities that were not always transferable from host country to country of origin, so he or she might prefer to stay on in the host country in order to continue receiving a pension.

20. There were many such examples. Furthermore, irregular migrant workers contributed to the economy of host countries, and it could be worthwhile to use the same moral argument, as had been done with child labour, to justify ratification. The Committee was seeking new approaches to demonstrate the important role that migrant workers played in development.

21. **Mr. Crépeau** (Special Rapporteur on the human rights of migrants), addressing the Third Committee for the first time in his capacity as Special Rapporteur, said his mandate would be guided by certain principles. Everyone was a migrant, or descendant of one, for migration was ingrained in humankind — it was a means of coping with environmental, political or economic adversity. Migration was not an anomaly. Migrants' rights were human rights. The International Bill of Human Rights stipulated that migrants, irrespective of their immigration status, were entitled to the same rights and dignity as all other citizens, save the right to vote or hold public office and the right to enter and stay in the country.

22. States should guarantee the same socio-economic services for migrant workers and their families as they did for their own nationals. While distinctions could be made based on immigration status, they must not be discriminatory and must be justified within the human rights framework. Guaranteeing dignity also meant addressing the vulnerability of migrants, especially irregular migrants and temporary migrant workers. It was important to help them fight exploitation and trafficking into new forms of slavery and find ways to avoid recourse to smuggling rings.

23. That did not imply that State authorities could not reserve some entitlements to citizens or specific migrant categories, or expel migrants in irregular situations. Any expulsion must be consistent with the human rights framework. Migrants who risked persecution and torture could seek asylum and should not be deported, nor should those who had founded families with host country nationals. Detention should only be a measure of last resort provided that a number of conditions were met, and alternatives should be explored.

24. Irregular migration was not a crime. Authorities increasingly referred to it in criminal terms and, in some cases, even criminalized irregular migration or assistance to migrants in an irregular situation. Paradoxically, those States had shown no intention of providing migrants with the guarantees enshrined in criminal law. Applying administrative law to migration to bypass the stringent requirements of criminal law could subject foreigners to abhorrent legal standards.

25. Xenophobic discourse had been mainstreamed over the last decade and was gaining increasing social acceptance in many countries owing to the lack of a credible political counter-discourse. There was, as yet, very little mobilization in favour of migrants, and even less so for irregular migrants. History had shown that other vulnerable groups had had their rights recognized by generating social and political sympathy. Migrants, however, were not organized, they spoke a different language, did not vote and sought to avoid attention for fear of being expelled.

26. While it was commonly said that migrant workers "stole jobs", it was important to remember that it was the market for their skills and employment, which locals found unacceptable, that had attracted them. It was sometimes forgotten that migration made a positive,

sometimes indispensable, socio-economic contribution to society and increased the competitiveness of host economies and that sealing borders was impossible in democratic States. Those factors should be taken into account in political discourse at all levels of government.

27. The work done on migration by international and regional organizations was crucial for advancing the rights and protection of all migrants. The International Labour Organization (ILO) had also been influential in setting standards, ensuring compliance with obligations under instruments and providing technical assistance. There were many opportunities for partnership and for stimulating dialogue as international cooperation on migration issues was on the rise. International instruments were essential tools to be ratified widely and their principles should be disseminated and implemented.

28. He looked forward to strengthening synergies to implement the Convention and engage in meaningful, forward-looking dialogue with States that had yet to ratify it. He reiterated that it was everyone's responsibility to ensure respect for migrants' rights and that States must comply with the international human rights obligations. Changing the often inflammatory political discourse on migration remained a challenge. It was important to have a balanced discourse on migration which recognized the cultural value of the circulation of talents and ideas and the need for migrant workers.

29. **Mr. Soemantri** (Indonesia) said his Government stood ready to continue working with Mr. Crépeau where his predecessor had left off. It was vital to increase joint efforts to encourage all countries of origin, transit and destination to adhere to an instrument that improved migration management and protection of migrants, and States should fulfil the minimum core obligations to ensure promotion and protection of those rights. Indonesia was fully committed to ratifying the Convention and wished to know what could be done to increase efforts to achieve its universal ratification. Referring to ILO Convention No. 189, concerning Decent Work for Domestic Workers, he asked the Special Rapporteur to elaborate on how he intended to focus on domestic migrant workers in his work.

30. **Mr. Quintaes** (Brazil) asked what the Special Reporter thought about the racial profiling used by certain law enforcement officials in developed countries, which was a barrier to the enjoyment of the rights of migrant workers.

31. **Ms. Solomon** (International Organization for Migration (IOM)) said that she appreciated Mr. Crépeau's framing of the issue of migration as neither bad nor good per se — that depended on the conditions under which it took place. Voluntary migration through legal channels could benefit individuals and societies of destination and origin alike. However, when migration was forced, individuals and their families suffered, as did societies. She agreed that in a mobile and globalized world, migration was a natural consequence and more legal channels must be created in recognition of labour market needs and the legitimate aspirations of individuals.

32. Taking the opportunity to welcome also the report by Mr. El Jamri, she said that IOM was an active member of the committee promoting ratification of the Convention and worked very closely with Governments willing to bring their national legislation into line with its standards. She reiterated that all human rights instruments applied to migrants as human beings. IOM had set up a dedicated global outreach department to advise Governments and stakeholders on the specific application of human rights instruments to migrants and she was pleased to say that more and more Governments were seeking their assistance.

33. Regretting a general climate of xenophobia and discrimination, she pointed out that the World Migration Report 2011, to be released during the 100th session of the IOM Council in December, was dedicated specifically to the perception of migrants and migration. It was hoped that the Special Rapporteur and the Chair of the Committee on Migrant Workers would continue to highlight the positive contribution of migration to societies. She offered her organization's support to them both in the execution of their mandates and asked if there were particular ways in which IOM might help in their efforts.

34. **Mr. de Bustemente** (Observer for the European Union) said that the cooperation between the United Nations and the European Union bodies dealing with asylum and migration constituted a fundamental tool for protecting the human rights of migrants and other vulnerable groups. As part of its anti-illegal immigration arsenal, the European Union had negotiated 13 readmission agreements with third countries, which provided for the return of migrants in irregular

situations, as well as smugglers and traffickers to their countries of origin. He asked whether the Special Rapporteur considered readmission agreements to be an effective deterrent and, concerning the role of the United Nations in countries of origin and transit, whether the United Nations could enhance its role in the successful reintegration of the victims of trafficking.

35. Many Member States were affected by rising international migration flows, which had led to a constant need to adapt and extend reception facilities. He asked what internal measures could be used and what the United Nations, particularly UNHCR, could do to ensure acceptable reception standards for migrants. Lastly, as European Union member States were fully aware of the obligation to protect minors' rights under the provisions of regional and international instruments, he asked how the phenomenon of unaccompanied minors crossing borders illegally could be reduced in a way that protected the rights of minors.

36. **Mr. Crépeau** (Special Rapporteur on the human rights of migrants), recalling that domestic workers were not all necessarily migrants and that their vulnerability often stemmed from the fact that they lived in their employers' homes, said that it was difficult to control what went on in the privacy of a home, as decades of work on family violence had shown. There was still work to be done, and he repeated that domestic workers would be on his agenda. The speed of the negotiation and adoption of ILO Convention No. 189 had been a strong signal from the international community that there was interest in the rights of domestic workers.

37. While racial profiling was not new — it might not have been a major issue in the past as racism was fought on other fronts — it had gained unprecedented prominence since 9/11. Racial profiling targeted not only migrants, but also domestic minorities. It had to be recognized that law enforcement mechanisms often had limited means of identifying individuals so it was important to train officers of the law on the consequences of racial profiling, making sure that legislation provided guidance.

38. He would be meeting with IOM later that day and would explore methods of collaboration. Creating more legal channels of migration was politically unpopular in many countries, owing to xenophobia that had been exacerbated by the current financial crisis and unemployment. It was important to find means to allow migrants to enter legally, as they would come anyway, and there were a number of ideas and solutions that could be proposed to States that had difficulty managing migration flows.

39. Readmission agreements were not bad in themselves and were examples of the exercise of territorial sovereignty. However, what mattered was making sure that the implementation of those agreements complied with the human rights framework, which was where such agreements fell short. They were governed by administrative law, whose standards were much lower than criminal law. It was legitimate to return irregular migrants, but not under procedures involving long-term administrative detention or deplorable holding conditions that offended their dignity. As methods used by Governments were somewhat shrouded in secrecy and detention centres were often inaccessible to external observers, cooperation in monitoring those methods was important to ensure that the process was legally, politically and socially legitimate.

40. With regard to how the United Nations could facilitate reintegration, it was vital to understand what drove migration and ensure solutions in line with the root causes. The same applied to traffickers and smugglers. The European Union had been a pioneer in trying to standardize reception conditions for asylum-seekers and refugees, and that was a useful approach for the future. It was important to work together to define what was acceptable when receiving large flows of migrants.

41. The issue of unaccompanied minors was a difficult one and it would be impossible to reduce it without understanding why they were travelling and what role they played in their families. Historically, communities had sent young ones far away in search of a better life or to find solutions for their problems at home. However, while those minors were in the territories of destination or transit countries, they should be treated in accordance with the human rights framework, no differently than any other children.

42. **Ms. Díaz** (Mexico) said that, having witnessed the effects of stricter immigration legislation and the criminalization of migration on the enjoyment of human rights, her country welcomed the Special Rapporteur's resolve to continue dealing with that issue. The human rights of migrants and their families was an important issue for Mexico, as evidenced by the holistic reform of legislation to protect the rights of migrants regardless of their status, which was the legal basis of

Mexico's migration policy. She would like to hear the Special Rapporteur's views on the political participation and the civil rights of migrants, and asked whether he intended to address that in the short term. She also enquired if the issue of migration in connection with climate change was a priority of his mandate.

43. **Mr. Hauri** (Switzerland) said that he agreed particularly with the need cited in the report (A/66/264) for more in-depth analysis of migration in connection with climate change. Switzerland had recently commissioned a study on that topic and would be happy to share its outcomes. The study had shown shortcomings in national and international protection mechanisms for migrant populations and also that the 1951 United Nations Geneva Convention did not apply to cross-border displacement resulting from natural disasters. Since the term refugees could not be applied, he asked if they could be called migrants and would be grateful if the Special Rapporteur could share his views on the matter. Switzerland supported the suggestion to continue discussion of migration in the context of climate change and asked what specific action was planned or already taken in that regard.

44. **Mr. Crépeau** (Special Rapporteur on the human rights of migrants) noted the justified preoccupation of Mexico concerning criminalization, regulation and discourse at the national and subnational levels. Migrants, regardless of their status, were also local residents dealing with local authorities and employers. Consequently, work had to be done to change not only legislation, but also discourse and attitudes. As he had said before, very often migrants did not speak out or complain about exploitation for fear of being sent back. Therefore, the issue of political participation and exercising one's rights was difficult for migrants, and it was important to find ways to ensure that migrants denounced exploitation and felt secure enough to do that, as regular citizens would do.

45. The issue of migration and climate change was still under study. While climate change was a proven fact and would have lasting effects, it was not yet known what the consequences on migration would be or when such movement would be triggered. However, climate migration had always existed. As global warming seemed to be speeding up, coastal states would probably face major challenges or even tragic consequences. Solutions to specific issues such as the vulnerability of populations in low-lying areas would have to be found. States themselves were beginning to research and plan for such eventualities, but they would need assistance. It was true that the status of refugee did not apply to climate migrants, a priori, but it applied to all victims of natural disasters.

46. However, if a State did not take the requisite measures to protect them or took discriminatory action, that might be a case of violation of their fundamental rights, which could be viewed as persecution. Sometimes, natural disasters were used to further marginalize vulnerable populations: racial profiling could be apparent in work planning or the distribution of assistance, with marked differences in the way some populations were treated. That was where refugee status could be useful. He was not sure whether it was necessary to create the status of climate migrant or propose a resolution or an international convention on that question. The studies being carried out were important as they provided insight on how to define the terms of the debate, but it was still three or four decades too early to take any decisions.

47. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context), referring to the issue of whether existing approaches and guidelines to relief and reconstruction were sufficient with regard to the right to adequate housing, said that disaster response efforts had previously taken a narrow view of that right and, in some cases, had adversely affected victims. That was not surprising, since there was little guidance and practice for disaster response workers on the matter, and much of what was available focused on protecting internally displaced persons. Her report (A/66/270) discussed the human rights standards applicable to disaster response and attempted to bridge the gap between the need for more specific and comprehensive guidelines and the existing human rights guidance.

48. One of the challenges to the right to adequate housing in the wake of a disaster was the protection of vulnerable groups. Vulnerability was widely recognized as a key element in disaster risk reduction, but it was little known that discrimination affected people's ability to protect themselves and recover from disaster because the impacts were, to a large extent, anthropogenic. Disasters magnified and deepened inequalities: the poorest and most vulnerable groups often lost everything, even their lives.

49. Relief programmes could unwittingly exclude or further marginalize some groups, and reconstruction programmes had excluded displaced residents who could not produce documented proof of ownership, exposing them to land-grabbing and eviction. Taking such discrimination into account offered insights into failings in disaster prevention or response and also helped Governments and aid organizations to target programmes to address inequality and protect the most vulnerable.

50. Not all forms of tenure were equally recognized and protected. The term "informal settlers" referred to a diverse group of persons who were not individual owners of formerly registered property or who had multiple tenure arrangements. While security of tenure was the cornerstone of the right to adequate housing, individual ownership was not the only legitimate arrangement — there were many that were historically, culturally and politically rooted. Anyone with ties to the land or home where they lived before a disaster was recognized as a rights-holder. Yet, individually registered property owners tended to be given preference, as international agencies showed reluctance to invest in places of return or relocation where land tenure was unclear.

51. It was also particularly difficult to reconstruct in urban areas where the political economy of land was complicated and planning poor, as was the case in Haiti. The report had highlighted how policy and practice had evolved to recognize other forms of tenure, particularly through the use of participatory mechanisms to assess the pre-disaster state of occupancy and tenure. Those mechanisms offered promising and more flexible alternatives to established processes. In the short term, it was essential to assess pre-disaster tenure rights for effective reconstruction and recovery. Governments and aid agencies should bear in mind the importance of ensuring a minimum of tenure security and take the opportunity to address inequality.

52. The most marginalized were also exposed to land-grabbing and evictions in the wake of disaster, which offered a clean slate for ambitious development plans. The implications for human rights were not all positive, as disaster recovery efforts were sometimes guided by the so-called principle of "optimal use of land", which disregarded the rights of poor communities, evicting them to make way for business and tourism facilities or under the guise of groundless public safety or disaster risk mitigation concerns.

53. Such cases could be seen as forced eviction, and Governments must act with due diligence to ensure that disaster situations were not manipulated to serve the interests of a few to the detriment of the most vulnerable. Even when public safety concerns were legitimate, decisions on land use or housing must still be subject to human rights standards and weighed against the socio-economic costs of displacement and resettlement.

54. A final challenge to the realization of the right of housing was the risk of too great a focus on the technical and regulatory aspect of rebuilding physical structures, and not enough emphasis on the social aspect of rebuilding a habitat, a community with an adequate standard of living and the services, infrastructure and economic opportunities required to sustain return and recovery. That had been made clear on her visit to Haiti.

55. There was a divide between emergency efforts and long-term recovery, and the international community had difficulty managing the transition between the two. Focusing on individual beneficiaries and deliverables as ends in themselves could divert from the fundamental responsibility to respect rights and the requirement to work towards long-term recovery. She encouraged Governments, donors and international agencies to devise durable solutions and ensure a continuum of aid between relief and recovery. Further work could be conducted with regard to mechanisms to support fast-track determination of tenure rights; legal and practical measures to support those who were not individual owners of registered property; territorial planning and land use instruments for providing a technical and legal foundation for reconstruction; and access to land use and control in the event of natural disasters, including conditions for requisition and acquisition for shelter or settlement.

56. Placing the right to adequate housing at the core of reconstruction and recovery efforts was not only an obligation, but also an opportunity. Disaster response should not replace development efforts. It was an occasion to address the inequalities that disaster magnified and exacerbated and to contribute to the progressive realization of adequate housing for all. It was a difficult task, but a vital one, for human rights did not cease to exist when disaster struck — it was then that they mattered most.

57. **Mr. Gálvez** (Chile), while agreeing with the Special Rapporteur that each case was unique depending on the country's development and the extent of the damage, said that certain principles should be used to guide post-disaster reconstruction. One such principle was maintaining consultation with the populations affected. Chile had been and would probably continue to be hit by natural disasters such as earthquakes, tsunamis, volcanic eruptions and floods. In 1960 it had been struck by the biggest earthquake in human history, measuring 9.7 on the Richter scale, and in 2010 by another measuring 8.8, with over 200 aftershocks affecting over 12 million people and the country's main production centres.

58. The Government of Chile was doing all in its power to study the right to adequate housing for people affected by disaster, and it was important to document exhaustively the lessons learned in national reconstruction efforts. Special emphasis had been placed on allowing families to remain where they had lived prior to the disaster, even when they did not formally own or occupy their homes — only 20 per cent would be relocated owing to safety issues. The State had assumed 100 per cent of the reconstruction costs in all cases.

59. Another concern had been to prevent the work from falling into the hands of a small monopoly of construction companies and suppliers, whether national or international. Contracts had been signed through a transparent and open process with over 200 small and medium-sized hardware suppliers. The three largest hardware chains had accounted for only 25 per cent of all sales in the reconstruction effort whereas they usually garnered some 70 per cent of market share. Of the 187 construction companies hired, 183 were small and medium-sized enterprises actively involved in rebuilding over 85 per cent of the homes nationwide. Lastly, he appreciated the Special Rapporteur's inclusion of Chile in drafting her report following the 2010 earthquake, but thought that it could be complemented with further information on the Government's reconstruction efforts and invited her to see the situation in Chile on the ground.

60. **Ms. Skarpeteig** (Norway) said that the Special Rapporteur's pioneering report on an all-too-often neglected issue could be a useful tool to remedy that imbalance. Children were particularly vulnerable to abuse and attacks when their homes were demolished. She asked what could be done to ensure that their needs for shelter were not neglected. Noting that the right to adequate housing was increasingly a subject of judicial review and that jurisprudence had shown that housing rights were legally enforceable human rights, she asked whether the Special Rapporteur could provide any interesting or encouraging examples in that regard.

61. The Special Rapporteur might find it useful to apply the concept framework of "respect, protect and fulfil" in her analysis of the right to adequate housing post-disaster. Lastly, she asked what role local authorities, in cooperation with civil society, could play in ensuring the observance of rights after disasters, for example in land registries. The Special Rapporteur played a key role in implementing and promoting the right to adequate housing, and Norway fully supported her mandate, work and recommendations.

62. **Mr. Quintaes** (Brazil) said that Brazil had experienced a construction boom resulting from increased economic growth, which had led to strong demand for adequate housing. That demand had previously been limited by economic constraints and was only recently being addressed. The country would also be hosting major world sporting events in the next few years, which meant that many sites had to be built. A working group had thus been established within the Council for the Protection of Human Rights to ensure that none of the communities' rights to housing would be violated. He invited the Special Rapporteur to visit Brazil to follow up on those aspects and expressed solidarity with the Chilean people in the wake of the horrifying natural disaster that the country had experienced.

63. **Mr. Bin Haron** (Malaysia) said that adequate housing was an imperative aspect of economic, social and cultural rights and, as such, the Government placed great emphasis on providing quality and affordable housing for all Malaysians. It had launched the One Malaysia Housing Programme to increase home ownership among middle income earners and provide more affordable housing in big cities. In the interest of creating a caring society, the Programme had been developed for middle income groups who were unable to afford expensive homes, but ineligible for low-cost housing. Homes were priced between $48,000 and $95,000 in urban and suburban areas where there was high demand.

64. To ensure smooth management and delivery, the body responsible was directly under the supervision of

the Prime Minister's office. The aim was to provide a better future and more opportunities for Malaysians to own property. The National Housing Corporation had also implemented a special scheme constructing affordable homes for low-income groups and subsidizing repairs and reconstruction of dilapidated houses. The Government had spent in excess of $500 million over 12 years to ensure that low-income groups were not denied their right to adequate housing and would continue to provide economic justice for its people.

65. **Mr. Yahiaoui** (Algeria) said that the Special Rapporteur was one of three mandate holders who had accepted the invitation to visit his country and in July 2010 had met with Government and high-ranking officials, as well as civil society actors. In anticipation of the report on her country visit, the Government had noted with interest her preliminary conclusions relating to her mandate, and he assured her of Algeria's determination to continue constructive dialogue and cooperation to follow up on her recommendations for improving housing policy.

66. She would have noted the substantial efforts by the Government to improve the living conditions of citizens, with a project to build 2 million housing units and social housing provided free of charge to those with low incomes. Much had been done, but there was even more to be done, and it was urgent to meet the high demand for housing, especially for young people. In the medium and long term, the Government intended to establish a national housing policy based not only on demand, but also on social, cultural and environmental factors.

67. The Special Rapporteur had advocated the provision of some services and utilities in slums surrounding major cities. While those were indeed basic rights, he asked whether that might not perpetuate precarious conditions and increase demand, which remained high. The different levels of development, volume of demand for housing, and cultural and social realities unique to each country had to be considered.

68. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context) said that it was important to note the information provided by the Chilean delegation and learn from the country's experiences. She hoped that there would not be a repeat of the disastrous earthquake that had affected practically every Chilean family. However, it was important to be aware that disasters were recurrent, particularly those directly linked to climate change. It was not only necessary to prepare, but also to act. It was important to learn from past experiences, using them to guide actions.

69. Ultimately, local authorities were the ones who would be in charge of reconstruction. It was true that their resources and power varied from country to country, but they would be at the forefront of relief efforts. To ensure respect for the rights of the most vulnerable, the key was making their voices heard. Given that cities and local governments were highly unequal, it was very likely that those voices would not be the first to be heard.

70. She was fully aware that local government officials were under pressure from people of power and influence, so businesses were most likely to profit in the aftermath of disaster. Mechanisms must be in place to ensure that the most vulnerable had genuine participatory input in reconstruction efforts. The real decisions were often taken elsewhere so it was important to ensure women's participation, as there were many examples of how women had often been left out of reconstruction.

71. With regard to the right to adequate housing, she said that it was very important to allocate significant sums of public funds, as Brazil, Malaysia and Algeria had done, to launch massive housing construction projects. After at least two decades dominated by new liberal thinking according to which the State should not provide funds for housing, it was worth acknowledging that some countries had challenged that thinking and provided funds to build adequate housing for those who could not afford market prices.

72. Construction was also a powerful strategy for economic recovery and growth — it provided jobs and was the perfect Keynesian measure to promote development. But from an industrial perspective, building a house was like building a car: it was simply a matter or producing and delivering a commodity. However, for the people in need, it was more than just a house — it was a home. It was important to have a roof over one's head, but for vulnerable groups, it was more important to be located where there were services and infrastructure available. A number of countries had undertaken massive construction projects on the

periphery of cities with no infrastructure or jobs or city life.

73. On the question of choosing to upgrade existing settlements or build new ones, she did not think it best to reason in absolutes. Both were needed, and each specific situation would call for a specific solution. Upgrading existing communities could sometimes be an effective and cost-effective way of providing adequate housing. If the location was too exposed to hazards or it was impossible to transform the community, resettlement was the better option, making sure that it was done in respect of human rights.

74. Lastly, she commended Brazil's initiative to create a working group to monitor the right to adequate housing because, as Special Rapporteur, she had been receiving several complaints and reports of violations of that right and forced evictions in the cities preparing to host the World Cup and Olympic Games. She recommended that Brazil should adopt a normative framework to deal with that situation and safeguard the right to adequate housing.

75. **Mr. Soemantri** (Indonesia) said that the right to adequate housing in post-disaster settings required special attention to improve disaster management and reconstruction. Indonesia supported the conclusions and recommendations of the report to integrate the fulfilment of that right in disaster management policy, as well as the need for the Guiding Principles on Internal Displacement in safeguarding the rights of victims. Recognizing that there were many recommendations in the report, he asked the Special Rapporteur which ones would be given priority in light of the complexity of the issues.

76. As a country prone to natural disaster, Indonesia was ready to share its best practices in disaster management and reduction, respecting the rights of victims in emergency response, immediate recovery and reconstruction. The country had comprehensive domestic legislation, as well as national and local disaster management boards and bodies, with sufficient financial and human resources. Those best practices had been applied following the many disasters that had struck in recent years, and the rehabilitation and reconstruction programme had been conducted with an approach of humanity, impartiality and neutrality and in the spirit of "build back better" and "delivering as one".

77. **Ms. Fries-Gaier** (Germany) said that Germany had been a main sponsor, with Finland, of Human Rights Council resolution 6/27 on adequate housing as a component of the right to an adequate standard of living. In her report, the Special Rapporteur had placed emphasis on the importance of tenure rights, namely of non-formal owners with insecure tenure and she asked if the Special Rapporteur could elaborate on her practical experiences on that issue. Secondly, on the matter of forced evictions, she requested the Special Rapporteur to describe and evaluate significant challenges related to the right to housing in the context of forced evictions outside the scope of disaster prevention, relief and recovery efforts.

78. **Mr. Hauri** (Switzerland) said that there had been many natural disasters in recent years, but climate change, rapid urbanization and population growth affected the way in which the right to housing and its implementation was conceived. The Special Rapporteur had mentioned that, in the event of natural disasters, the Guiding Principles on Internal Displacement were applied to ensure the right to housing for people who had moved within their countries' borders, while those who had moved across borders were not protected by that regime. He asked the Special Rapporteur how the right to housing for the latter category of persons could be guaranteed. It was important to ensure peaceful cohabitation between local populations and displaced persons, and her report had shown that the focus of humanitarian aid on displaced persons created tensions between them and host communities and hindered development. He therefore asked what measures could be taken to meet the needs of both populations.

79. **Mr. de Bustemente** (European Union) said that he welcomed the focus on the realization of the right to adequate housing in post-disaster settings and, after careful study of the report, subscribed to her findings on need to use a human rights-based approach to disaster response. He asked if the Special Rapporteur could elaborate further on how reinterpretation of the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons could help prevent vulnerable groups from being disproportionably affected by disaster as a result of discrimination and neglect.

80. **Ms. Solomon** (International Organization for Migration (IOM)) said that, in the Inter-Agency Standing Committee (IASC), IOM was cluster lead in camp coordination and management in natural disaster situations and also shelter cluster lead in Haiti and Pakistan. IOM shared the Special Rapporteur's concerns about land tenure issues in Haiti, which had not been

clear before the disaster and which were impeding movement out of camps into sustainable housing. In an attempt to sort out those issues, a pilot community-based tenure mapping model dubbed "data tracking matrix" had been developed and was being used there and tested in other similar situations. The experience in Haiti had shown that many of the displaced had not had tenure rights and therefore had no right to return to a particular area. She thanked the Special Rapporteur for calling the Committee's attention to those issues and looked forward to working with her in building resilience and ensuring rights post-disaster.

81. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context) said that one of the key issues was tenure — the cornerstone of the right to adequate housing in the context of relief and reconstruction. It was also a main feature of the situations that she had come across as Special Rapporteur, which were mainly forced evictions relating to developments, city beautification and the like. There were many texts providing a legal basis for protecting human rights in contexts where people were removed for their own safety, and such removal also fell under human rights.

82. Situations where the majority of a population lived under several types of ambiguous tenure arrangements were widespread in developing countries, and also in rental agreements in developed countries. Those people did not live like that for pleasure, but because they had no other options. The formal market was not open or affordable to them. Urban development and expansion was very exclusionary and was geared towards the business class and the well off. The vulnerable members of society, migrants included, had to make do with what was left — dilapidated homes, insecure tenure arrangements, settlement in peripheral areas without any infrastructure or basic services — and faced the ambivalence of politicians who only promised and delivered when they wanted the votes of those vulnerable persons.

83. However, as soon as those lands could be put to more profitable use, they were the first to be evicted. New infrastructure projects would be drawn up for informal settlement sites because it was cheaper to do so than in formal middle-income communities, where people had access to lawyers and would demand compensation if lands were to be expropriated. In informal settlements, where tenure rights were uncertain, it was easier to evict and displace.

84. In relief and reconstruction contexts, Haiti was an extreme example. Before the earthquake, 80 per cent of the population had lived in informal settlements with few or no services and unclear tenure rights. When the camps had been set up, some people had found themselves in less precarious situations, almost better off — with basic health care, services, and even employment opportunities. The s ion was thus not to build houses, but to upgrade neighbourhoods, preparing the neighbourhoods for the return of those displaced and improve progressively the condition of those who had not been affected by the earthquake and had remained.

85. Conflicts did sometimes arise when the seven elements of the right to adequate housing laid out in general comment No. 4 were not taken into consideration. That could cause discrimination and inequality between the victims and the non-victims. There was a need to rethink the scope of humanitarian assistance in relief and recovery, including the framework of the right to adequate housing. For example, relief efforts in Haiti should have already been given the opportunity to invest in existing neighbourhoods. That could only happen if the Government ended the ambiguity concerning informal settlements, declaring which would be upgraded and which should be relocated for the safety of the people who lived there. That would provide a sound legal basis for reconstruction. She would appreciate collaboration with the IASC and all agencies on that matter and planned to continue working to ensure security of tenure in informal settlements.

86. **Ms. Semasinghe** (Sri Lanka), speaking in exercise of the right of reply, said, with regard to the reference made to his country by the representative of Liechtenstein and the response provided by the Special Rapporteur on extrajudicial, summary or arbitrary execution, that his delegation was disappointed that persons mandated to report to the United Nations on human rights issues would use unrelated and unsubstantiated information that damaged the reputations of Member States. Sri Lanka had suffered the onslaught of a brutal terrorist group for over 27 years, with suicide bombings and indiscriminate killing of civilians. Thankfully, those had ceased when Government security forces defeated the terrorists.

87. The Government had subsequently adopted a policy of reconstructing war-damaged areas and returning former combatants to their own communities after a period of rehabilitation. As documented by UNICEF, the terrorists had recruited thousands of children, whom the Government had also returned to their families.

88. The elements that had sympathized with and funded the defeated terrorists were currently waging an international propaganda campaign, accusing the Government of human rights violations. A widely broadcast video to that effect had subsequently been proven false. It was very disappointing that the Special Rapporteur had chosen to adopt the propaganda line disseminated by the defeated terrorists and to make throw-away comments that could not be substantiated. War was not a pleasant exercise, and the Government of Sri Lanka had taken the utmost care to avoid killing civilians in line with its "zero civilian casualty" policy. Despite the unfounded numbers bandied about irresponsibly by the media, there was no hard evidence of large numbers of civilian deaths in the final stages of the conflict.

89. The 7,000 deaths alleged in a leaked United Nations document had been publicly disowned by the then Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Sir John Holmes. Other figures had been fabricated out of thin air, and the Government had painstakingly produced statistics to disprove those claims. The Lessons Learnt and Reconciliation Commission, appointed by the Government, was currently examining all aspects of the conflict, including accountability issues, and its report was expected the following month. Reiterating his disappointment that the Special Rapporteur had ignored those details, he said that the Government of Sri Lanka strongly rejected those ill-informed comments.

The meeting rose at 1 p.m.